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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 268

LUTHER ROBINSON MADDOX,
Petitioner,

vs.

RAYMOND O. SHROYER and MARY K. SHROYER, His Wife, ET AL.,
Respondents.

PETITION FOR A REHEARING ON ORDER OF OCTOBER 8, 1962, DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Dated: November 2, 1962.

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Petitioner, Luther Robinson Maddox, moves this Honorable Court to set aside and vacate its ORDER of October 8, 1962, denying his Petition for a Writ of Certiorari, in the above-entitled cause, and to grant him a Rehearing thereon, pursuant to Rule 58(2) of this Court, for the

following reasons and on grounds which were available to Petitioner or have come to his attention in the meantime—and not previously presented or were presented improperly by him.

I.—

THE COURT BELOW IN ITS DECISION FAILED TO FIND OR OVERLOOKED THE FACT THAT THE TRIAL COURT DID NOT MAKE A FINDING OF FACT WHEN IT VACATED THE JUDGMENT STANDING AGAINST RESPONDENT YOUNG FOR MORE THAN THREE YEARS AND THAT ITS HOLDING WAS CONTRARY TO THE MANDATORY RULE OF 60(b), FRCP, AND CONTRARY TO HOLDING IN OTHER CIRCUITS

Judge McGuire did not have the power to vacate that default judgment which had been standing for more than three years against Respondent Young. Rule 60(b), FRCP, is mandatory and he had no jurisdiction to even entertain such a motion. His Order of May 26, 1961, was not only contrary to the *Statutory Rule* but also contrary to decisions in other Circuits (JA 26, 27). Hence, this Court should review this case and fix the law for all future litigants.

In *Kathe* v. *U. S.* (9CA, 1960), 284 F. 2d 713, that Court held: Since Appellant's Motion was filed more than three years after entry of judgment the District Court was without jurisdiction to even entertain the motion to vacate such judgment. In *Rutland Transit Co.* v. *Chicago Tunnel Terminal Co.* (7CA, 1956), 233 F. 2d 655, it was held: A denial of a motion to vacate a default judgment was

proper where defendant had been guilty of "inexcusable neglect". The Trial Court made no findings in the instant case; but the record shows clearly Young and his attorney just overlooked the matter and *a default judgment was obtained on May 3, 1958 (JA 119).* That was simply "inexcusable neglect". Cf. *Jurin* v. *Wiltshire Parkway, Inc.* (DC,CA, 1956), 238 F. 2d 263; *Mayfair Extension, Inc.* v. *Magee* (DC,CA, 1957), 241 F. 2d 453 and *Kyona* v. *Clark* (DC, 1955), 20 F. Serv. 60(b) 20, Case 1.

In *City and County of Honolula* v. *U. S.* (9CA. 1955), 244 F. 2d 573, it was held: A motion for relief from a judgment on grounds of "mistake" must be filed within one (1) year from entry of judgment. Judge McGuire set this judgment aside, arbitrarily and capriciously, without a hearing on the motion and objections made by Petitioner—and without stating any reasons for so doing. It is very significant, however, that before the Opposition was filed by Petitioner, he stated that he had already made up his mind, in effect, to vacate the judgment (JA 19). The record also shows very plainly that he did not desire Petitioner to file an Opposition, for which the *Local Rule* provided.

Since litigation nowadays is so expensive—and almost too exorbitant for the ordinary man to appeal cases and obtain justice—this Court should determine now, *in this case*, whether or not Judge McGuire had the power and jurisdiction, under Rule 60(b) to even entertain, or pass on, a motion of this kind: To set aside a judgment of more than three years standing against Young.

—in order that litigants, henceforth, may know whether Rule 60(b) means what it says, or not.

II.—

IT WAS NOT ONLY UNREASONABLE BUT UNCONSCIONABLE FOR JUDGE McGUIRE TO ENTER AN ORDER ON MAY 25, 1961, DIRECTING PETITIONER TO FILE AN AMENDED COMPLAINT WITHIN TEN DAYS FROM MAY 16, 1961, UNDER THE EXISTING CONDITIONS IN THE CASE

Under such an ORDER, Petitioner had only one day within which to examine his voluminous records and file such an Amended Complaint as Judge McGuire seemed to feel was necessary in the case, after a Pre-trial Statement had been presented to the Pre-Trial Examiner and SIX (6) Respondents herein had answered the Amended Complaints as filed, setting up issues to be tried. Such an ORDER, on the face of it, was not only unreasonable but beyond the power and ability of Petitioner to comply with it—one (1) day after that ORDER was signed and filed (JA 26, 27). Moreover, Petitioner did not know about, or see, that ORDER until after it was signed and he was notified by the Clerk of the Court. Judge McGuire, *at that time*, was not the Pretrial Judge and not the Chief Judge of the Trial Court, and all these matters were actually in the hands and under the jurisdiction of the Pre-Trial Judge, according to the Pretrial Rules of the Court (See *Appendix I* to Petition for Writ).

Only Six of the Respondents filed a Pretrial Statement and that was filed with the Examiner *only on the DAY OF THE HEARING* and not in accordance with the Pre-Trial Rules (JA 14-20). No other Respondents appeared on May 16, 1961, before the Pretrial Examiner, *and they did not file a Pre-Trial Statement under the Mandatory*

Rule of the Court on Pre-Trial Procedure. Judge Matthews was the Pre-Trial Judge at that time, and under date of May 26, 1961, *pursuant to FIAT of Judge Matthews* a Motion was filed by this Petitioner asking for an Extension of time within which to complete discovery in the case and for the case to be taken from the *Ready CALENDAR.* This motion was never heard or passed upon by the Pre-Trial Judge (JA 35-39). That Motion of Petitioner speaks for itself (see original Pretrial Statements filed with the Clerk of the Court by the Pretrial Examiner, (JA 6, and original filed in this Court). If Statutory Rules are meaningless, certainly this Court should review this case and make it plain what they do or do not mean.

III.—

PETITIONER SHOULD HAVE HAD OR SHOULD HAVE ALL THE JUSTICES OF THIS COURT EXAMINE AND PASS UPON HIS CASE, INVOLVING SUCH GRAVE AND IMPORTANT QUESTIONS AS ARE PRESENTED HERE IN THIS CASE

Obviously, this case was examined during the Summer Recess when most of the Justices were away on vacations. The Petition for a Writ was DENIED on October 8, 1962, and Mr. Justice Goldberg had, at that time, been a Justice for a week (not participating according to the record). Petitioner feels and submits that he should be given the benefit of the consideration of all the Justices, a hearing and examination, by them, of this case, before the Final Judgment thereon is made. No Reply Briefs were filed in this case by the Respondents herein; and,

therefore, it is to be assumed that all statements and arguments made by this Petitioner in his Petition for a Writ must be taken as true.

The *original records* in this case are before this Court and it is submitted that such records show plainly Petitioner has been deprived of a *Jury Trial* in this case; that he has not had fair and impartial hearings in the case as the law and Constitution require; that great discrimination has been shown against him by the Trial Court; that *Due Process of Law* has not been accorded him. He should, therefore, be allowed to have all Justices of this Court examine and pass judgment on his Petition for a Writ at this time.

The *Syracuse Broadcasting Corp. Case* (2CA, 1961), 295 F. 2d 269; and cases cited therein must have been overlooked by this Court in its decision of October 8, 1962, and the cases cited therein, for that court held: Such an ORDER as Judge McGuire entered on June 1, 1961, *dismissing the action against all of the Respondents herein with prejudice was to drastic, and neither law nor justice.* When Petitioner moved to set that ORDER aside, he refused to vacate it. His action in so-doing was an abuse of discretion and showed great prejudice on his part—when there was a Motion pending to take the case from the *Ready Calendar and extend the time for further discovery in the case,* particularly when there were previous orders of his existing that had blocked discovery, and where two witnesses had been noticed for the taking of their deposition (Appendix B, pp. 34, 35 to Petition for Writ).

IV.—

For the above reasons and grounds set forth—with briefs and records in file before this Court, if necessary—Petitioner requests that he be given a REHEARING on, and a reconsideration of, the ORDER of October 8, 1962, denying his Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, in order that justice be done under the law and the Constitution.

Respectfully submitted

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NOTE: Emphasis added.

CERTIFICATE OF COUNSEL

I hereby certify that the above Petition for a Rehearing on order of October 8, 1962, denying Petition for a Writ of Certiorari, in the above-entitled cause, is presented in good faith and not for delay; and that the same is restricted to the grounds specified in Rule 58(2) of this Court.

LUTHER ROBINSON MADDOX, *Pro Se*,

Dated: November 2, 1962.